

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 272 - SB 475

March 4, 2013

SUMMARY OF BILL: Prohibits a health care provider from being held liable when a malpractice action arises out of the provision of emergency medical care in a hospital emergency department or in an obstetrical unit, surgical suite, or diagnostic unit immediately following the evaluation or treatment of a patient in a hospital emergency department, unless the claimant has proven that the defendant was negligent in accordance with the recognized standard of acceptable professional practice in the community in which the defendant practices or in a similar community at the time the alleged wrongful action and the claimant suffered injuries, which would not have otherwise occurred as a proximate result of the negligent act or omission.

Establishes requirements to be met by licensed health care professionals that are to provide expert testimony, and grants the court authority to waive the requirements when it is determined that an appropriate witness otherwise would not be available. Creates a rebuttable presumption that the defendant was negligent where it is proven that the instrumentality causing the injury was in the defendant's exclusive control and that the accident or injury ordinarily does not occur in the absence of negligence. Establishes jury instruction that the claimant has the burden of proving the negligence of the defendant and what information the defendant had or was able to obtain regarding the patient's medical history, the presence of a preexisting provider-patient relationship, and the circumstances constituting the emergency and surrounding the delivery of emergency care.

ESTIMATED FISCAL IMPACT:

NOT SIGNIFICANT

Assumptions:

- There will not be an impact on the oversight or regulatory functions of the Department of Commerce and Insurance or the Department of Health.
- Any financial impact on reimbursement rates, if realized, would not be reflected in actual expenditures until several years after implementation of the law. Any immediate fiscal impact to the Bureau of TennCare will be not significant.
- Changing the burden of proof in health care liability actions in this manner will have no significant impact on the case loads of trial and appellate courts.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

Lucian D. Geise, Executive Director

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